IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.278 OF 1998

Mr. Robert D'Silva ...Petitioner.

V/s

The State of Maharashtra
and ors. ...Respondents.

Mrs. S.A. Damale for the petitioner.

Mr. S.D. Shinde, APP fo the State.

CORAM: V.M. KANADE, J.

DATE: 12th January, 2006

ORAL JUDGMENT:

1. Heard the learned Counsel for the petitioner and the learned APP for the State.

2. The petitioner is challenging the order passed by the Metropolitan Magistrate, 31st Court, Vikhroli, Mumbai on the ground that the trial court has not framed the charge under section 397 of the Indian Penal Code. It is submitted by the learned Counsel appearing on behalf of the petitioner that the petitioner was the owner of a Chawl and respondents - accused were some of his tenants. It is submitted that they had assaulted the petitioner with deadly weapons like sword, gupti, knife and had caused

grievous injuries to him. The learned counsel appearing on behalf of the petitioner invited my attention to section 397 of the Indian Penal Code and submitted that the garments manufactured by the petitioner were removed from the room and the room in which his other property was kept was locked by the assailants. She, therefore, submitted that the trial court has clearly erred in not framing the charge under section 397 of the I.P.C.

3. It is not possible to accept the submission made by the learned Counsel appearing on behalf of the petitioner. The specific averment in paras 3 and 5 in the said complaint is that the respondents-accused had threatened the petitioner that he should vacate the premises and had further threatened him that if he did not hand over the vacant possession, they would assault him and that, accordingly, on 7/4/1996 at 12.30 p.m. they had assaulted him with deadly weapons. The averments in the complaint do not disclose that the garments manufactured by the petitioner were either removed or were detained in any room. Therefore, the provisions of section 397 are not attracted. The Trial Court has issued process against the accused under section 323, 504, 506(II) of the Indian Penal Code. Thus, there is no merit in the

said submissions made by the learned Counsel appearing on behalf of the petitioner.

4. Criminal Writ Petition is accordingly dismissed.

Rule is discharged.

V.M. KANADE, J.